

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Joe (& Phil) Toone Ditch Attn: Lurene Toone</p> <p>RESPONDENT</p>	<p>MEASURING DEVICE AND CONTROL STRUCTURE NOTICE</p> <p>SEAA No. 1478 DISTRIBUTION ACCOUNT: 103265 WATER RIGHT: 35-8274</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

- (a) the measuring device; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. Respondent diverts water from Lost Creek, tributary to the Weber River, for irrigation use in the Joe and Phil Toone Ditch (also known as the Joe Toone Ditch) located near Croydon, Utah.
2. This water diversion is regulated under the Weber River Distribution System operated under the direction of the State Engineer and/or his duly appointed Water Commissioner.

3. A suitable water measuring device, typically a Parshall Flume, doesn't exist or was removed from the ditch.

III. ACTIONS REQUIRED

1. An adjustable and lockable headgate (control gate) must exist to enable the water commissioner and/or deputy commissioner to regulate the quantity of water diverted from Lost Creek into the Joe & Phil Toone Ditch (also known as the Joe Toone Ditch).
2. A suitable measuring device such as a Parshall flume must be installed to measure the water diverted and delivered to the Joe & Phil Toone Ditch.
3. Respondent's facilities, including the control gate and measuring device must be in satisfactory operating condition and accessible to the water commissioner to enable the water commissioner to measure, regulate, and report water diverted from Lost Creek.
4. The measuring device must be completed and functional **before April 10, 2014**.

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation."

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Ross Hansen
Regional Engineer
Western Region
Utah Division of Water Rights
Weber Office
(801) 538-7240

or

Ben Anderson
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7240

1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 24th day of September, 2013

A handwritten signature in black ink, appearing to read "Ben L. Anderson", is written over a horizontal line.

Ben L. Anderson, P.E.
Distribution Engineer
Utah Division of Water Rights


cc: Ross Hansen, Regional Engineer
Reed Cozens, Weber River Water Commissioner

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 24th day of September, 2013, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Joe Toone Ditch
Attn: Lurene Toone
222 West 2280 North, #105
Provo, UT 84604**

USPS TRACKING # **9114 9011 2308 6069 1220 25**
& CUSTOMER For Tracking or inquiries go to USPS.com
RECEIPT or call 1-800-222-1811.



Kelly Horne
Division of Water Rights
Field Services Secretary